

APPLICATION TO A JUDGE

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

REGISTRY FILE NUMBER

20065

REGISTRY LOCATION

VICTORIA

In the case between:

KAROL F. MADERA

CLAIMANT(S)

and

VICTORIA REAL ESTATE BOARD et al

DEFENDANT(S)

APPLICANT

FROM:

Fill in the name,
address and telephone
number of the applicant.

NAME VICTORIA REAL ESTATE BOARD et al
ADDRESS c/o PEARLMAN & LINDHOLM
736 BROUGHTON STREET
CITY, TOWN, MUNICIPALITY VICTORIA BC PROV. V8W 1E1
POSTAL CODE

TEL # 388-4433

The registry staff will tell
you the date of the
hearing.

An application will be made to the court

on day month year at time

or as soon after this
time as the court
schedule allows.

Courtroom #201

at

court location
Victoria

Give details of the order
you are asking for.

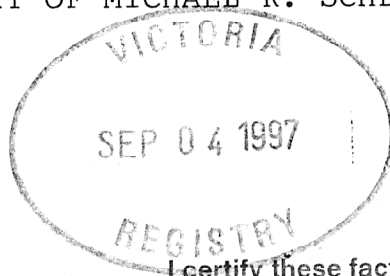
for the following order:

THAT THE ACTION BE DISMISSED AS IF HEARD ON ITS MERITS ON THE
BASIS THAT THE ISSUES IN THIS ACTION HAVE PREVIOUSLY BEEN
ADJUDICATED UPON IN REGISTRY FILE NO. 17430, VICTORIA REGISTRY.

Give the facts you wish
the court to consider
and then sign the
Application.

The facts on which the application is based are as follows:

SEE AFFIDAVIT OF MICHAEL R. SCHERR, DATED AUGUST 22, 1997.



I certify these facts are true.

SIGNATURE OF APPLICANT: MICHAEL R. SCHERR

This will be completed
by the court.

The Court orders that

day month year by the Court



Registry File No. 20065
Victoria Registry

**IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
(SMALL CLAIMS DIVISION)**

BETWEEN:

KAROL F. MADERA dba REALTY RESEARCH GROUP

CLAIMANT

AND:

VICTORIA REAL ESTATE BOARD et al

DEFENDANTS

AFFIDAVIT

I, MICHAEL R. SCHERR, Barrister and Solicitor, of 736 Broughton Street, in the City of Victoria, in the Province of British Columbia, HEREBY MAKE OATH AND SAY THAT:

1. I am a solicitor acting for the Defendants and as such have knowledge of the matters deposed to in this affidavit save and except where stated to be based on information and belief, and where so stated I verily believe them to be true.
2. The Claimant commenced an action on May 20, 1994, ("the first action"), with the following style of cause:

Registry File No. 17430
Victoria Registry

**IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
(SMALL CLAIMS DIVISION)**

BETWEEN:

KAROL F. MADERA dba REALTY RESEARCH GROUP

CLAIMANT

AND:

**VICTORIA REAL ESTATE BOARD,
ROBERT FRASE, ROBERT J. MELANSON, JOHN AND/OR JANE DOE**

DEFENDANTS

3. In the first action, the Claimant alleged that the Defendants breached a contract between the Claimant and the Defendant, Victoria Real Estate Board ("the Board"), by denying the Claimant access to the Board's on-line computer system.

4. In the first action, the Claimant also alleged that the Defendants conspired to injure the Claimant's real estate and related business by:

- (a) denying him access to the Board's on-line computer system;
- (b) by other associated overt and covert acts;
- (c) by abusing their power;
- (d) by not adhering to the rules of natural justice and fairness;
- (e) by threatening to and/or taking unfounded and lawful action against the Claimant;
- (f) by breaching the provisions of the *Competition Act*;
- (g) by breaching the provisions of the *Society Act*;
- (h) by breaching the provisions of the *Company Act*;
- (i) by engaging in activities to control the Claimants freedom of speech, advertising, and dissemination and exchange of information;
- (j) by harassing the Claimant;
- (k) by discriminating against the Claimant;
- (l) by intimidating the Claimant.

5. The Claimant alleges that the causes of action set out in paragraph three and four occurred from May 22, 1988 "onwards".

6. The Claimant took a leave of absence from the Board effective October 1, 1988.

7. The trial in the first action was heard over the course of three days.

8. The Honorable Judge Bracken pronounced judgment in this matter on June 17, 1997, dismissing the Claimant's action, and ordering that the Defendants, Fraser and Melanson, be paid the sum of \$1,000.00 each pursuant to section 20(5) of the *Small Claims Act*, and the sum of \$100.00 for each attendance in Court. All defendants were entitled to fees and expenses in filing a Reply.

9. The Claimant commenced this action on May 31, 1995.

10. In the Notice of Claim herein, the Claimant alleges a breach of contract as a result of the Defendant's denying the Claimant access to the offices of the Board on or about June 1, 1989.

11. The Claimant also alleges in the Notice of Claim herein that the Defendants conspired to injure the real estate and related business of the Claimant, by *inter alia*:

- (a) defaming him;
- (b) threatening him;
- (c) denying him access to the Board's offices;
- (d) other associated overt and covert acts;
- (e) refusing to adhere to the letter and/or follow the spirit of the Board's constitution;
- (f) by not adhering to the rules of natural justice and fairness;
- (g) by threatening to and/or taking unfounded and unlawful action against the Claimant;
- (h) by breaching the provisions of the *Competition Act*;
- (i) by conducting the business affairs of the Board in an oppressive and unfairly prejudicial manner;
- (j) be breaching the provisions of the *Society Act*;
- (k) by engaging in activities to control the Claimants freedom of speech and the free dissemination and exchange of views;
- (l) by threatening and harassing the Claimant;
- (m) by abusing the Board's process;
- (n) by discriminating against the Claimant.

12. In an Amended Notice of Claim filed on June 21, 1996, the Claimant alleges discrimination and harassment on the basis of a sexual orientation, that is, that he was and is of heterosexual orientation.

13. The Claimant alleges that the causes of action set out in paragraphs 10, 11 and 12, occurred in or about May and June, 1989.

14. The causes of action which the Claimant alleges in this action are identical to those alleged in the first action and, at most, are more specific allegations of the same causes of action.


15. I am advised by Monte W. Prior, who acted on behalf of the defendants in the first action, that the Claimant led evidence concerning the Board's alleged denial of the Claimant's access to the Board's affairs, at the hearing of the first action.

16. It is respectfully submitted that this matter is *res judicata* and that this action should be dismissed on that basis.

17. As the matters are alleged by the Claimant to have occurred in May and June, 1989, it is further respectfully submitted that they are time-barred in any event, pursuant to the provisions of the *Limitations Act*.

18. I make this affidavit in support of an application to have this action dismissed.

SWORN BEFORE ME, at the City :
of Victoria, in the Province of :
British Columbia, this 22nd :
day of August, 1997. :


A Commissioner for taking :
Affidavits for British Columbia. :


MICHAEL R. SCHERR

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BARRISTER
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